

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

United States of America

v.

Criminal No. 09-cr-88-01-SM

Juan Garcia Hernandez, et al

ORDER

Re: Document No. 55, Motion to Suppress Evidence

Ruling: Denied.

The circumstances fully justified execution of the search warrant without complying with the "knock and announce" rule, for the reasons given in the government's opposition memorandum. Law enforcement officers were justified in determining that knocking and announcing their presence would unnecessarily expose them to great danger and would risk the destruction of evidence. It was apparent from the investigation preceding execution of the warrant that a large amount of cocaine was stored in the house to be searched, that it was guarded, that a major drug dealer had charge of the site, supported by several co-conspirators, all likely armed and dangerous.

In addition, as defendant virtually concedes, the Supreme Court's decision in Hudson v. Michigan, 547 U.S. 586 (2006) precludes suppression of evidence based upon failure to comply with a knock and announce rule. See United States v. Jones, 523 F. 3d 31, 36 (1st Cir. 2008).

Finally, the rapid employment of aggressive, superior force and a noise flash device in executing the valid search was objectively reasonable under the dangerous circumstances faced by law enforcement and gives rise to no meritorious argument supporting defendant's motion to suppress the evidence seized.

The motion is to suppress (doc. no. 55) is denied for the reasons given by the government in its opposition memorandum. With

respect to defendants Ciro Lopez Garcia and Marco Garcia, the motion is also denied on grounds that neither defendant has standing to challenge the validity of the search as neither had a cognizable expectation of privacy in the searched premises.


Steven J. McAuliffe
Chief Judge

Date: October 8, 2009

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